



BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN A., JR., AND LENORA M. PORCELLA)

For Appellants: John A. Porcella, Jr., in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

John D. Schell
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of John A., Jr., and Lenora M. Porcella for refund of personal income tax in the amount of \$93.00 for the year 1968.

The question presented is whether appellants, who did not provide at least one-half their support for any of the four years immediately preceding the year in issue, are eligible to use the income averaging provisions of the California Revenue and Taxation Code.

Both of appellants were born in 1949. Until their marriage in 1968 appellants resided with their respective parents. Neither appellant received any taxable income in 1964 or 1965, but between them they received \$1,258.00 in 1966 and \$2,580.00 in 1967. After paying personal income tax to the State of California for 1968, on May 31, 1970, appellants filed an amended 1968 return and claimed a refund in the amount of \$93.00. The claim was based upon the income averaging provisions of the California Revenue and Taxation Code, sections 18241-18246. Respondent determined that appellants did not meet the self-support requirements for income averaging

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and denied their refund claim. The denial gave rise to this appeal.

Income averaging is governed by sections 18241-18246 of the Revenue and Taxation Code. Those sections contain a number of specific requirements for eligibility. Subdivision (c) of section 18243 provides:

(c) (1) For purposes of this article, an individual shall not be an eligible individual for the computation year if, for any base period year, such individual (and his spouse) furnished less than one-half of his support.

(2) Paragraph (1) shall not apply to any computation year if --

(A) Such year ends after the individual attained age 25 and, during at least four of his taxable years beginning after he attained age 21 and ending with his computation year, he was not a full-time student.

(B) More than one-half of the individual's adjusted taxable income for the computation year is attributable to work performed by him in substantial part during two or more of the base period years, or

(C) The individual makes a joint return for the computation year and not more than 25 percent of the aggregate adjusted gross income of such individual and his spouse for the computation year is attributable to such individual.

The term "computation year" means the taxable year for which the taxpayer chooses to average income, and the "base period" means the four taxable years immediately preceding the computation year. (Rev. & Tax. Code, §1824, subd. (e).)

In the instant case appellants' received no taxable income whatsoever during the base years 1964 and 1965. The income amounts for 1966 and 1967 indicate that they also failed to provide at least one-half of their support for the two succeeding base years: Under the

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circumstances, appellants are not eligible for income averaging unless they come within one of the exceptions set forth in section 18243, subdivision (c)(2). Appellants, however, were both 19 years of age in 1968 and they received all of their 1968 income for service's performed during that year. In addition, more than 25 percent of the aggregate adjusted gross income for that year was attributable to each individual. The self-support requirement, therefore, is not obviated by the section 18243, subdivision (c) (2) exceptions in the instant case.

In sustaining respondent's action in this matter our determination is consistent with the legislative purpose in limiting income averaging eligibility to certain classes of individuals. A passage in Volume 5A of the CCH 1971 Stand. Fed. Tax Rep., section 4775T.017, illustrates that appellants were within the class of persons meant to be excepted from income averaging by section 18243, subdivision (c):

In addition to the citizen or residence requirement, an individual seeking to average his income must have provided 50% or more of his own support during each of the 4 base period years. This is to prevent the accrual of averaging advantages by young persons whose incomes fluctuate widely because they began their first full-time jobs upon leaving school.

Because appellants failed to meet the self-support requirements of section 18243, subdivision (c), they are precluded from the benefits of income averaging. Accordingly, we conclude that respondent's action in denying appellants' claim for refund was correct.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of John A., Jr., and Lenora M. Porcella for refund of personal income tax in the amount of \$93.00 for the year 1968, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day
of September, 1971, by the State Board of Equalization.

By the State Board of Equalization.

Paul H. Berry, Chairman
John W. Lynch, Member
William L. Spruell, Member
Robert Spruell, Member
_____, Member

ATTEST:

S e c r e t a r y